

RESOLUTION NO. ____- 2012

A RESOLUTION ADOPTING THE CAPACITY ASSURANCE PROGRAM (CAP) TASK FORCE REPORT AND DEFINING TERMS AND CREATING PROCEDURES CONSISTENT WITH THE CAP TO PROVIDE THAT PROPERTIES WITH A SANITARY SEWER CAPACITY USE OF RECORD AS OF THE EFFECTIVE DATE OF THIS RESOLUTION ("RESOLUTION DATE") SHALL RECEIVE A PERMANENT ALLOCATION OF SANITARY SEWER CAPACITY IN THE URBAN COUNTY GOVERNMENT SANITARY SEWER SYSTEM ("SEWER ALLOCATION") NOT EXCEEDING THE AMOUNT OF THE PREVIOUS USE OF RECORD UNLESS THE CAPACITY IS VOLUNTARILY RELEASED; TO PROVIDE THAT PROPERTIES MAY REQUEST A SEWER ALLOCATION UPON APPROVAL OF A PRELIMINARY SUBDIVISION PLAN, FINAL DEVELOPMENT PLAN, OR AMENDED FINAL DEVELOPMENT PLAN ("QUALIFYING PLAN"), DEVELOPMENTS THAT MAY PROCEED WITHOUT A QUALIFYING PLAN MUST HAVE PERMANENT ALLOCATION OF SEWER CAPACITY OR CREDITS PRIOR TO ISSUANCE OF A BUILDING PERMIT AND THAT NO TAP-ON PERMIT WILL BE GRANTED WITHOUT CERTIFICATION OF ADEQUATE CAPACITY; TO PROVIDE THAT, SUBJECT TO EPA APPROVAL, PROPERTIES FOR WHICH AN "ACTIVE" QUALIFYING PLAN HAS BEEN SUBMITTED TO THE URBAN COUNTY PLANNING COMMISSION PRIOR TO THE RESOLUTION DATE SHALL BE GRANTED A PERMANENT SEWER ALLOCATION PROVIDED THE RELEVANT PLAN IS APPROVED BY THE COMMISSION NOT LATER THAN JULY 3, 2013; TO PROVIDE THAT, SUBJECT TO EPA APPROVAL, RESIDENTIAL DEVELOPMENT PROPERTIES THAT HAVE AN APPROVED AND CERTIFIED QUALIFYING PLAN AFTER THE RESOLUTION DATE BUT BEFORE JULY 3, 2013 MAY RESERVE A PERMANENT SEWER ALLOCATION WHICH WILL BE GRANTED UP TO A MAXIMUM ANNUAL THRESHOLD; TO PROVIDE THAT, SUBJECT TO EPA APPROVAL, NON-RESIDENTIAL DEVELOPMENT PROPERTIES THAT HAVE AN APPROVED AND CERTIFIED "ACTIVE" QUALIFYING PLAN AFTER THE RESOLUTION DATE BUT BEFORE JULY 3, 2013 MAY RECEIVE A PERMANENT SEWER ALLOCATION WHICH ALLOCATION WILL BE GRANTED PROVIDED ALL TAP-ON FEES ARE PAID BY JULY 3, 2014 WITH ANY UNUSED AMOUNT OF RESERVED CAPACITY EXPIRING; TO PROVIDE THAT PROPERTIES THAT RECEIVE AN APPROVED AND CERTIFIED QUALIFYING PLAN AFTER JULY 3, 2013 MAY OBTAIN A SEWER CAPACITY ALLOCATION IN ACCORDANCE WITH THE CAP AND IMPLEMENTING ORDINANCES UPON PAYMENT OF ANY APPLICABLE ADMINISTRATIVE FEE, RESERVATION DEPOSIT, AND/OR CAPACITY CHARGE; TO PROVIDE THAT, SUBJECT TO EPA APPROVAL, PROPERTIES LOCATED IN EXPANSION AREA #2 WILL RECEIVE PERMANENT SEWER ALLOCATIONS UPON SUBMISSION OF A CAPACITY REQUEST; AND PROVIDING THAT IF ANY PROVISION OF THIS RESOLUTION IS INVALIDATED BY THE EPA OR A COURT THE REMAINING PROVISIONS SHALL REMAIN IN FULL FORCE AND EFFECT.

WHEREAS, the mission of the sanitary sewer system of the Urban County Government includes safely and efficiently collecting and conveying sanitary sewage created in Fayette County to enhance public health and safety, protect lives and property, and minimize the discharge of sanitary sewage onto private property or into the environment in compliance with applicable federal and state laws; and

WHEREAS, the Urban County Government, the United States Environmental Protection Agency, and the Commonwealth of Kentucky have entered into a Consent Decree in a case styled *United States, et al. v. Lexington-Fayette Urban County*

Government, United States District Court for the Eastern District of Kentucky, Case No. 5:06-CV-00386, that requires LFUCG to implement a sanitary sewer system Capacity Assurance Program (CAP) to assure that no connections are allowed to the sanitary sewer system unless adequate capacity exists in the system to convey the One Hour Peak Flow, as defined below in Section 2; and

WHEREAS, a Task Force, including councilmembers and LFUCG officials was created in April 2012 to assist the Division of Water Quality in developing the CAP; and

WHEREAS, the Task Force held numerous public meetings on the issues related to the CAP which allowed substantial participation by both non-LFUCG stakeholders, including developers and major sanitary sewer users, and LFUCG stakeholders as the Task Force formulated its recommendations for the CAP; and

WHEREAS, the Urban County Council has reviewed the report prepared by the Task Force and the Task Force recommendations; and

WHEREAS, the Urban County Council accepts the Task Force report and approves the recommendations contained therein; and

WHEREAS, three of the Task Force recommendations require immediate implementation through passage by the Council of a Resolution;

NOW, THEREFORE, BE IT RESOLVED BY THE COUNCIL OF THE LEXINGTON-FAYETTE URBAN COUNTY GOVERNMENT:

Section 1 - That the Report of the Capacity Assurance Program (CAP) Task Force be and the same is hereby adopted by the Council.

Section 2 – That for the purpose of this Resolution the following definitions apply:

- A. **“Active”** in regard to preliminary subdivision plans, final development plans, and/or amended final development plans shall mean a plan that has not expired because activity related to the plan has occurred within the appropriate time period in compliance with the Zoning Ordinance and Land Subdivision Regulations.
- B. **“Adequate Capacity”** shall mean Adequate Treatment Capacity, Adequate Transmission Capacity, and Adequate Collection Capacity.
- C. **“Adequate Treatment Capacity”** shall mean that at the time the WWTP receives the flow from a proposed sewer service connection(s) or increased flow from an existing sewer service connection(s), when combined with the flow predicted to occur from all other authorized sewer service connections (including those which have not begun to discharge into the Sanitary Sewer System), the WWTP will not be in “noncompliance” for quarterly reporting as defined in 40

C.F.R Part 123.45, Appendix A and that the new or increased flow to the WWTP will not result in Unpermitted Bypasses or diversions prohibited by the KPDES Permits due to lack of treatment capacity.

- D. “Adequate Transmission Capacity”** shall mean that each Pumping Station through which a proposed additional flow from new or existing sewer service connections would pass to the WWTP receiving such flow, has the capacity to transmit the existing One-Hour Peak Flow passing through the Pumping Station, plus the addition to the existing One-Hour Peak Flow predicted to occur from the proposed connection, plus the addition to the existing One-Hour Peak Flow predicted to occur from all other authorized sewer service connections which have not begun to discharge into the Sanitary Sewer System.
- E. “Adequate Collection Capacity”** shall mean that each Gravity Sewer Line, through which a proposed additional flow from new or existing connections would pass, has the capacity to carry the existing One-Hour Peak Flow passing through the Gravity Sewer Line, plus the addition to the existing One-Hour Peak Flow from the proposed connection, plus the addition to the existing One-Hour Peak Flow predicted to occur from all other authorized sewer service connections which have not begun to discharge into the Sanitary Sewer System without causing a Surcharge Condition.
- F. “Capacity Assurance Program” or “CAP”** shall mean the System Capacity Assurance Program as defined in Section VII Paragraph 16.B. of the Consent Decree.
- G. “Capacity Request”** shall mean written submission of a request to the Division of Water Quality (DWQ) for a Permanent Allocation or Reservation of sewer capacity/credits.
- H. “Consent Decree”** shall mean the Decree and all attachments lodged on March 14, 2008 between the United States of America and the Commonwealth of Kentucky (Plaintiffs) v. Lexington-Fayette Urban County Government (Defendant), Civil Action No. 5:06-cv-386, with an effective date of January 3, 2011.
- I. “Credit”** shall mean a unit of flow equivalent to one gallon per day (1 gpd).
- J. “EPA”** shall mean the United States Environmental Protection Agency and any successor departments or agencies of the United States.
- K. “LFUCG”** shall mean the Lexington-Fayette Urban County Government, a municipality within the meaning of that term in CWA, established under the laws of the Commonwealth of Kentucky.
- L. “One Hour Peak Flow”** shall mean the greatest flow in a sewer averaged over a sixty (60) minute period at a specific location expected to occur as a result of a representative 2-year 24-hour storm event.
- M. “Permanent Allocation”** shall mean the assignment of sewer capacity/credits to a property and is not subject to expiration.
- N. “Reservation”** shall mean the temporary assignment of sewer capacity/credits to a property until a Permanent Allocation is made or the temporary assignment expires.
- O. “Sanitary Sewer System”** shall mean the WCTS owned or operated by LFUCG designed to collect and convey municipal sewage (domestic, commercial and industrial) to a WWTP.
- P. “Use of Record”** shall mean the existing or previous wastewater flow from a property that is represented in the baseline condition of the hydraulic model of the Sanitary Sewer System.

Section 2 – That properties in Fayette County that have a sanitary sewer system “use of record” as of the effective date of this Resolution (“Resolution Date”) shall receive a

permanent allocation of sewer capacity/credits not to exceed the maximum previous wastewater flow from such property unless the property's owner or otherwise legally responsible party voluntarily releases the permanent allocation.

Section 3 – That properties in Fayette County may request Permanent Allocation of sanitary sewer capacity/credits upon approval of a Preliminary Subdivision Plan, Final Development Plan, or Amended Final Development Plan for the subject property.

Developments that may proceed without the aforementioned plans must have Permanent Allocation of capacity/credits prior to issuance of any building permit and in no case shall a tap-on permit be issued without certification of adequate capacity or proof of credit allocation.

Section 4 – That, subject to approval of the CAP by the EPA, properties in Fayette County that have an active Preliminary Subdivision Plan, Final Development Plan, or Amended Final Development Plan that has been submitted to the Lexington-Fayette Urban County Planning Commission (“Commission”) prior to the Resolution Date shall be granted a permanent allocation of sewer capacity/credits provided the relevant plan is approved and certified by the Commission not later than July 3, 2013.

Section 5 – That, subject to approval of the CAP by the EPA, residential development properties that have an active Preliminary Subdivision Plan, Final Development Plan, or Amended Development Plan that has been approved and certified by the Commission after the Resolution Date but before July 3, 2013 may make a reservation of Permanent Allocation of sewer capacity/credits up to a maximum annual threshold determined by LFUCG.

Section 6 – That, subject to approval of the CAP by the EPA, non-residential development properties that have an active Preliminary Subdivision Plan, Final Development Plan, or Amended Development Plan that has been approved and certified by the Commission after the Resolution Date but before July 3, 2013 may make a reservation of Permanent Allocation of sewer capacity/credits provided all tap-on fees for the property are paid by July 3, 2014. Any amount of the reserved sewer capacity/credits that has not been used by July 3, 2014 shall expire.

Section 7 – That properties in Fayette County that have an active Preliminary Subdivision Plan, Final Development Plan, or Amended Development Plan that has

been approved and certified by the Commission after July 3, 2013 may make a Capacity Request in accordance with the CAP and implementing LFUCG ordinances upon payment of any applicable Administrative Fee, Reservation Deposit and/or Capacity Charge required by the CAP.

Section 8 – That, subject to the approval of the CAP by the EPA, properties located in Expansion Area 2 in Fayette County will receive a Permanent Allocation upon submission of a Capacity Request without payment of any charges or fees.

Section 9 – If any provision of this Resolution, or the application of such provision, should be rendered or declared invalid by the EPA or any court of competent jurisdiction the remaining portions or parts of this Resolution shall remain in full force and effect.

Section 10 – That this Resolution shall be effective on the date of its passage.

PASSED URBAN COUNTY COUNCIL:

MAYOR

ATTEST:

CLERK OF URBAN COUNTY COUNCIL